Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF WORLDCOM, INC.

I. Introduction and Summary

WorldCom, Inc. (WorldCom) hereby responds to the Federal Communications Commission's (Commission) call for comment on AT&T's request to contribute to universal service on the basis of its projected revenues.[1] Universal service contributions currently are based on contributors' historical gross-billed end-user interstate and international telecommunications revenues, pursuant to section 54.711(c) of the Commission's rules.[2] AT&T's request for relief is premised on the interaction of two factors: (1) the six-month lag between the assessment and recovery of carriers' universal service contributions; and (2) AT&T's declining interstate and international telecommunications revenues.[3] As the base of revenues from which it recovers its contribution continues to shrink, AT&T, like other long distance carriers, must increase its universal service surcharges in order to collect the amount of money it owes the

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[1] "Commission Seeks Comment on AT&T Request to Contribute to Universal Service Based on Projected Revenues," *Public Notice*, DA 02-376, rel. Feb. 26, 2002 (Public Notice).
[2] *See* 47 C.F.R. § 54.711.
[3] *See* Letter from Robert W. Quinn, Jr., AT&T, to Magalie Roman Salas, FCC, CC Docket No. 96-45, filed Dec. 13, 2001 (AT&T Dec. 13 letter).

Universal Service Administrative Company (USAC). AT&T proposes to forecast its revenues for the upcoming quarter, and to have the administrator invoice it for its forecasted revenues multiplied by the universal service contribution factor.[4] This methodology results in AT&T paying less than what it would pay under the current methodology, and would simultaneously result in the remaining contributors paying more than they otherwise would. AT&T offers to reduce its universal service surcharge if the Commission permits AT&T to contribute to universal service on the basis of projected revenues.

WorldCom urges the Commission to reject AT&T's request. As discussed below, granting the requested relief would not be in the public interest. Moreover, it would divert attention and valuable Commission resources from the Commission's consideration of more fundamental and equitable reform of the universal service system.

Granting AT&T the special treatment that it requests would come at the expense of all other universal service contributors, especially those experiencing declining revenues, and their customers. This is because allowing AT&T to contribute on the basis of projected revenues would reduce AT&T's universal service contribution. That would lead to a smaller overall contribution base and, thus, a higher contribution factor. Although all carriers would pay that higher factor, AT&T would apply the factor to its (lower) projected revenues, while other carriers with declining revenues would apply it to their (higher) historical revenues.

WorldCom, as the second largest long distance company in terms of revenue, is especially concerned about the proposal. Because it would continue to contribute based on its historical revenues, WorldCom would be asked to pick up the largest portion of the

[4] AT&T Dec. 13 letter.

"foregone" AT&T revenue contribution. WorldCom would then be forced to establish higher universal service surcharges than it would otherwise, in order to ensure that it was collecting the amount necessary to cover its contribution to the federal fund. Of even greater concern, WorldCom would have to set its surcharges at a level that exceeded AT&T's surcharges because WorldCom's contribution would be based on its historic revenues. As a result, all other things being equal, the total cost of purchasing long distance service from WorldCom would be greater than purchasing from AT&T. In WorldCom's view, this would have an anti-competitive effect in the market – customers who might otherwise have selected WorldCom will select AT&T as a service provider because of the effects of the universal service assessment scheme. The Commission must avoid granting such a substantial competitive benefit in the guise of universal service relief.

In addition, granting AT&T's request would necessitate the processing of a substantial number of "me, too" waiver applications. There is no logical or reasoned basis for distinguishing the trends affecting AT&T and its universal service surcharge from those affecting other long distance carriers such as WorldCom. The end result would be – without any doubt – a smaller overall contribution base and a higher contribution factor as each contributing carrier chose to pay based on whatever methodology – historical revenues or projected revenues -- minimized its payment.

The Commission is far better served by addressing the underlying problem that the current funding mechanism based on revenues is inherently unstable and must be replaced. Rather than addressing in a piecemeal fashion through individual requests for relief the decreasing interstate and international revenue and six-month lag issues that

AT&T identifies, the Commission should quickly implement meaningful and fundamental reform of the universal service contribution and recovery mechanisms. Specifically, the Commission should adopt the proposal set forth by a coalition of carriers that includes AT&T itself, along with WorldCom, Ad Hoc Telecommunications Users Committee, and e-commerce Telecommunications Users Group (e-TUG), to implement a per-connection universal service contribution and recovery mechanism.[5] Adoption of the Coalition's per-connection proposal would avoid the universal service "death spiral" wherein decreasing revenues and increased universal service demands cause carriers to increase universal service surcharges and structure service offerings to avoid increasingly burdensome universal service obligations.[6]

In the event that the Commission grants AT&T's request, the Commission must permit other universal service contributors facing circumstances similar to AT&T to also contribute to universal service on the basis of projected revenues. In fact, because, as the Commission pointed out in the Further Notice, the trends AT&T cites as a basis for relief affect the long distance industry generally,[7] the Commission should, if it decides to allow AT&T to contribute based on forecasted revenues, simultaneously conclude that all long distance carriers may elect to contribute on the basis of forecasted revenues. Interstate telecommunications revenues overall are declining,[8] and few if any interexchange carriers are immune from this trend. Processing the waiver requests of these carriers will

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5 Letter from Patrick H. Merrick, AT&T, to Magalie Roman Salas, FCC, CC Docket No. 96-45, filed Nov. 14, 2001 (Nov. 14 Letter).

6 *See, e.g.,* WorldCom Comments, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, filed June 25, 2001, at 11.

7 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, rel. Feb. 26, 2002 (Further Notice) ("Recently, however, interstate revenues have declined for interexchange carriers," *citing* AT&T and WorldCom's 2001 S.E.C. Forms 10-Q) at ¶ 7.

8 *See* Further Notice at ¶ 8.

be time-consuming and a drain on Commission resources. If the Commission considers other carriers' requests separately from AT&T, it will also give AT&T an artificial cost advantage over its competitors during the interim time frame. Thus, carriers should be permitted to simply notify USAC that they have elected to contribute on the basis of projected revenues.

Finally, contributing on the basis of projected revenues poses significant administrative difficulties for carriers and the universal service administrator alike. Carriers would have to engage in complex revenue-forecasting activities and then provide the administrator with actual revenue data so that the necessary true-ups could be performed (resulting in twice as many universal service filings). The forecasting and true-ups likely would cause significant swings in carrier contributions from quarter-to-quarter and corresponding universal service surcharges. A revenue-forecasting methodology also allows carriers to "game" the system by under-forecasting their revenues.

II. Background

In May 2001, the Commission initiated a proceeding to revisit its methodology regarding universal service contributions and recovery in light of market trends eroding the universal service contribution base.[9] The Commission received comments from a wide range of parties, several of which advocated reforming the universal service contribution methodology so that contributors would contribute to universal service on a per-connection basis, rather than on the basis of revenues.

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[9] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001) (2001 Notice).

On November 14, 2001, AT&T, WorldCom, Ad Hoc Telecommunications Users Committee, and e-TUG announced the formation of a Coalition advocating a per-connection contribution and collect-and-remit recovery methodology that would avoid the universal service "death spiral" wherein declining interstate and international revenues and an increasing fund size together place significant upward pressure on universal service surcharges. This declining revenue trend and the six-month lag between the time revenues are generated and assessed led AT&T to request on December 13, 2001, that the FCC permit it to contribute to universal service on the basis of projected revenues. AT&T claimed that this would allow it to avoid having to increase its universal service surcharge from 9.9 percent to 11.5 percent on January 1, 2002.[10] In return, AT&T offered to reduce its universal service surcharge to 9.0 percent. AT&T acknowledged its use of projected revenues would result in the Commission imposing a higher contribution factor on all contributors, because AT&T's universal service contribution base would decrease.[11]

The Commission did not act on AT&T's request, and AT&T increased its universal service assessment rate to 11.5 percent on January 1, 2002. AT&T refiled its projected-revenue request on February 7, 2002, for a proposed effective date of either March 1, 2002 or April 1, 2002.[12] The Commission sought comment on AT&T's request on February 26, 2002,[13] the same day that it issued the Further Notice of Proposed Rulemaking seeking additional comment on the Coalition's proposal to adopt a per-

10 AT&T Dec. 13 letter.
11 AT&T Dec. 13 letter at 1-2.
12 Letter from Robert Quinn, AT&T, to William F. Caton, FCC, CC Docket No. 96-45, filed Feb. 7, 2002 (Feb. 7 Letter).
13 *See* Public Notice.

connection universal service contribution methodology.[14] The Coalition will reiterate in comments filed shortly the need for the Commission to adopt and implement – by no later than July 1, 2002 – its proposed connection- and capacity-based approach to universal service contributions.

III. The Commission Should Deny AT&T's Request to Contribute to Universal Service on the Basis of Projected Revenues

A. AT&T's Request Is Properly Viewed As a Waiver, but AT&T Does Not Show "Special Circumstances"

As an initial matter, it is important to focus on the request for relief and what legal standard should apply to it. Although AT&T does not officially style its request as a waiver, AT&T argues that "[t]o the extent that a waiver is required to enable AT&T to use projected revenues…," such a waiver would be appropriate because special circumstances warrant deviation from the general rule and the public interest would be served by the grant.[15] WorldCom believes that AT&T's request can only be viewed as a petition for waiver. Section 54.711 of the Commission's rules requires contributors to file revenue data in accordance with the Telecommunications Reporting Worksheet. The Telecommunications Reporting Worksheet requires contributors to file historical revenue data, which serve as the basis for universal service contributions.[16] AT&T asks for relief from this rule and therefore effectively seeks a waiver.

But AT&T's request does not meet the waiver standard laid out in *WAIT Radio v. FCC*. First, as a general matter, the Court in *WAIT Radio v. FCC* found that "[a]n

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[14] *See* Further Notice at ¶ 2.
[15] AT&T Dec. 13 letter at 2, *citing* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio v. FCC*).
[16] *See* 2002 FCC Form 499-A, Telecommunications Reporting Worksheet.

applicant for waiver faces a high hurdle even at the starting gate."[17] The Court then found that waivers are appropriately granted where petitioners have shown "special circumstances"[18] and where it would serve the public interest in "particular, individualized cases" for an applicant or party to be relieved of the general rule.[19] The Court found that although a general rule would be undercut if it did not take into account considerations of hardship, equity, or more effective implementation of overall policy, the "very essence of waiver is the assumed validity of the general rule…,"[20] and an agency should not tolerate "evisceration of a rule by waivers."[21] AT&T does not show "special circumstances" or present a "particular, individualized" case, as the circumstances prompting AT&T to seek the requested relief are not unique to AT&T. Indeed, it is widely recognized that interstate revenues are declining.[22] The large interexchange carriers and others are reporting significant revenue reductions.[23] For WorldCom, a year-to-year comparison from fourth quarter 2000 to fourth quarter 2001 shows that WorldCom's business and consumer revenues fell eight and nine percent, respectively.[24] Sprint's long distance voice revenues fell more than 12 percent.[25]

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[17] *WAIT Radio v. FCC*, 418 F.2d at 1157.
[18] Id.
[19] Id.
[20] Id. at 1158.
[21] Id. at 1159.
[22] *See, e.g.,* J.P. Morgan Securities, Inc., "Telecom Revenue and Capex Trends, Fourth Quarter 2001," at 7 (March 25, 2002).
[23] Id.
[24] WorldCom Fourth Quarter and Full Year 2001 Results, www.worldcom.com/global/investor_relations/financials/files/wcom_group_4q01_financials.xls, viewed March 27, 2002.

[25] Sprint Corporation, Consolidated Statements of Operations for Quarters ended December 31, 2001, www.sprint.com/sprint/ir/fn/qe/4q01.pdf , viewed March 27, 2002.

AT&T's consumer revenues fell 18 percent and its business revenues fell at a mid-teens percentage.[26] Thus, AT&T cannot demonstrate the required "special circumstances."

B. AT&T's Proposal Works A Competitive Unfairness on AT&T's Rivals and Their Customers

Granting AT&T the special treatment that it requests would come at the expense of all other universal service contributors and their customers. As an initial matter, it is important to understand the mechanics of the proposal AT&T has made. First, AT&T would contribute to universal service on the basis of projected revenues. This will reduce its universal service contribution because, as AT&T states, its subject-to-USF revenues are declining over time. Stated differently, forecasted interstate revenues will be smaller in size than AT&T's interstate revenues were six months ago. As a result, the overall contribution base would decrease and the administrator would have to increase the contribution factor for all carriers. AT&T acknowledges as much: "AT&T's use of projected revenues would require the Commission to revise [the] contribution factor upwards to account for the smaller overall contribution base."[27]

As noted, WorldCom is especially concerned about the effects of granting AT&T's request. Because a higher contribution factor would be applied to its historical revenue base, WorldCom would receive a larger invoice from the administrator under the AT&T proposal. WorldCom would then be forced to establish higher universal service surcharges than it would otherwise in order to recover its required contributions to the federal fund.

Of even greater concern, WorldCom's surcharges will be higher than AT&T's to recover the increased cost to WorldCom. AT&T has offered to reduce its residential

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[26] AT&T News Release, "AT&T Announces Fourth Quarter Earnings," January 30, 2002.

universal service surcharge to 9.0 percent. WorldCom currently assesses a 9.9 percent residential universal service surcharge. If AT&T's request is granted, WorldCom is extremely concerned that, from a customer's perspective, all things being equal, the total cost of purchasing long distance service from WorldCom will be greater than the total cost of purchasing service from AT&T. Solely as a result of the USF assessment scheme, customers who might otherwise have selected WorldCom will select AT&T instead. Indeed, the intense competition in long distance prices and long distance "price wars" means that even a slightly higher universal service surcharge can impact a customer's choice of long distance provider.[28] The Commission should not confer such a substantial competitive benefit on AT&T in the guise of universal service relief.[29] Nor should it hand AT&T a competitive advantage vis-à-vis its competitors, especially when many of those carriers, like WorldCom, are also experiencing declining interstate and international revenues that in turn place upward pressures on their universal service surcharges.

C. Forecasting Revenues and Conducting True-Ups is Administratively Burdensome

Forecasting revenues and providing the necessary true-ups to actual revenues would be administratively burdensome for the universal service administrator and contributors that seek the same relief as AT&T. Indeed, less than a year ago, AT&T itself stated that "*under no circumstances* should the Commission adopt an assessment mechanism based on projections (emphasis added)," due to the "extraordinary administrative burdens that

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[27] AT&T Dec. 13 letter at 2.
[28] *See, e.g.,* Morgan Stanley, "1Q02 Preview: The Decoupling of Telecom," April 11, 2002, at 4 (noting the competitive long distance pricing).
[29] In WorldCom's view, to the extent the Commission decided to grant AT&T the relief it requests, it must simultaneously – and without requiring waiver petitions – allow other similarly situated carriers to utilize forecasted revenues to establish universal service contribution amounts. But WorldCom does not believe that forecasting methods should be adopted, and strongly urges the Commission to focus its resources on

would be incurred by the telecommunications carriers in developing those projections and the overarching incentive for carriers to underforecast demand."[30] As AT&T acknowledged, these burdens include costly calculations to determine future revenues and possibly future uncollected revenue, as well as some form of a true-up mechanism to account for errors in carriers' projections.[31] AT&T further noted, and WorldCom agrees, that auditing the true-ups would impose an unnecessary cost burden on both the universal service administrator (USAC) and contributors.[32]

Supplying USAC with revenue forecasts would result in increased administrative work for each business unit of a company at a time when staffing resources are limited for many companies. This is especially true when companies are developing and launching new products, because the revenues that will be generated from these products are far less predictable than for established products and services. Additionally, forecasting revenues would require carriers to file with USAC twice as many revenue filings, *i.e.,* for each reporting period, a contributor would have to file one worksheet containing forecasted revenues and a second containing actual revenues, so that the necessary true-ups could be performed.

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the Further Notice in this docket to quickly move to a final decision on a connection-based approach to collecting revenues for the federal fund.

[30] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AT&T Reply Comments, filed July 9, 2001, at 9.

[31] Id.

[32] Id.

The potential complexity of forecasting revenues and conducting true-ups can be seen in the hypothetical example below:

3Q-02 Revenue Forecast filed with USAC on June 1:

	Revenues	Factor	USAC Payment
Company A	$1B	10%	$100M
Company B	$500M	10%	$50M
Company C	$2B	10%	$200M
Total	$3.5B	10%	$350M

3Q-02 Actual Revenues filed with USAC on Nov 1:

	Revenues	Factor	USAC Payment
Company A	$1.5B	8.75%	$131.25M
Company B	$500M	8.75%	$43.75M
Company C	$2B	8.75%	$175M
Total	$4B	8.75%	$350M

In this example, the industry's (*i.e.,* Companies A, B and C) revenue forecast for third-quarter 2002 totaled $3.5 billion. USAC required $350 million for the fund, and thus the Commission calculated a contribution factor of 10 percent. At the end of third-quarter 2002, the actual industry revenues amounted to $4 billion, an increase from the estimated $3.5 billion. Because Company A under-forecasted its revenues, Companies B and C paid more into the fund than necessary. The true-up for this discrepancy would not occur until first-quarter 2003, because actual third quarter data would not be available at the time the fourth-quarter 2002 forecasts are due. In the meantime, all three companies would collect too much from their customers because each company would have set its surcharge based on the 10 percent contribution factor that was established using the forecasted revenues. As a result, all of the companies would have to adjust their universal service surcharges in the first-quarter 2003 to take into account the over-collection from customers. The forecasting methodology therefore could result in significant swings in a company's universal service surcharges from quarter-to-quarter as the company attempts to account for these factors. In addition, giving carriers the ability to forecast revenues could cause wide variances in the surcharge amounts from company-to-company in the same quarter.

Moreover, a company that under-forecasts revenues could gain an unfair competitive advantage. In the example above, Company A forecasted $1 billion in revenues, resulting in a $100 million payment to USAC. Company A ultimately generated $1.5 billion in actual revenues. Assuming no recovery of administrative costs, Company A would charge its customers a 10 percent surcharge. Company A thus would collect $150 million from its customers while only paying USAC $100 million. Company A would likely not have to remit to USAC the additional money until first-quarter 2003. It is not unreasonable to assume that some carriers will attempt to "game" the system in this way, adopting the age-old philosophy of "why pay now when you can possibly pay later?"

Furthermore, it would be doubly costly and burdensome for carriers to implement new processes and procedures to contribute on the basis of projected revenues, only to change course once again if the Commission adopts an entirely new contribution methodology based on connections. The above-described administrative processes that would have to be developed and implemented for projected revenues would be used for only a short time assuming the Commission adopts a per-connection approach in fairly short order. These processes would become obsolete under a per-connection approach, and the universal service administrator and carriers would then have to develop, learn, and implement new sets of procedures and processes for a connection-based support mechanism.

Changing processes would be well-worth the effort in order to contribute to the fund on the more stable, equitable, and non-discriminatory basis as would be achieved under the per-connection approach. But the many above-described downsides of contributing on the basis of projected revenues fails to justify the administrative burden of contributing on this basis. In addition to burdening carriers and the universal service administrator, every time a new methodology is implemented it raises the prospect of consumer confusion, because the surcharges on consumer bills will be affected.

D. The Commission Is Inviting a Process Where Each Carrier Will Attempt to Minimize Its Universal Service Payments

A decision by the Commission to treat AT&T's request as a waiver and grant it would trigger the filing of a substantial number of "me, too" waiver applications. With hundreds of long distance carriers operating today, and virtually all of them experiencing the same declining revenue trend that is affecting AT&T, each carrier will need to consider whether it, too, should minimize its contributions to the federal fund by contributing on the basis of projected revenues. Significantly, there is no logical or reasoned basis for distinguishing the revenue trends affecting AT&T and its surcharge from those affecting other long distance carriers such as WorldCom.

It is well-understood by the Commission and the marketplace that long distance revenues are in steep decline, and few if any long distance carriers are left untouched. In 1999, interexchange carriers reported an average of $13.871 billion in end-user interstate and international telecommunications revenues per quarter.[33] For the third quarter of 2001, the end-user interstate and international telecommunications revenues reported by

[33] J. Lande, Telecommunications Industry Revenues 1999, Table 8, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

interexchange carriers were only $11.450 billion -- a drop of more than 17 percent from 1999 levels.[34] For WorldCom, the revenues on which we contributed to universal service dropped from $22.554 billion in 2000 to $21.258 in 2001. Other carriers are experiencing similar declines.

As a result, carriers with declining revenues will file “me, too” waivers, while any carrier with growing revenues will prefer to use the historical-revenue methodology. In this way, each carrier will select the method that best minimizes its payments. The end result would be even steeper increases in the contribution factor. The Commission, carriers, and consumers would be far better served if the Commission addressed the underlying problem by adopting a per-connection contribution methodology. The per-connection methodology would stabilize the universal service contribution mechanism in light of declining revenues and provide a predictable, equitable system of universal service contributions.

E. If the Commission Grants AT&T's Request, Other Contributors Also Must Simultaneously Be Permitted to Contribute to Universal Service on the Basis of Projected Revenues

If the Commission grants AT&T’s request, it must simultaneously permit other contributors to obtain the same relief that AT&T seeks. As discussed above, allowing only AT&T to contribute to universal service on the basis of projected revenues would increase the overall contribution factor. This would in turn increase the contributions for other contributors who continued to be billed on an historical revenue basis, placing upward pressure on their universal service surcharges. At the same time, AT&T would

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[34] J. Lande & K. Lynch, Telecommunications Industry Revenues 2000, Table 14, Industry Analysis Division, Common Carrier Bureau (Jan. 2000).

be allowed to reduce its universal service surcharge. This unfair and anti-competitive result compels the Commission to grant any similar requests for relief.

Requiring waiver petitions from the many carriers that are similarly-situated to AT&T would be administratively burdensome and time-consuming for the Commission. Waiver requests could easily number in the hundreds and thus require substantial time to process. As the Commission was processing these waivers, carriers with pending petitions would be experiencing the anti-competitive effects of being assessed contributions on an historical revenue basis and the need to charge higher surcharges, while AT&T would be contributing less to the fund and charging a lower end-user surcharge. This is an unacceptable outcome. The Commission, if it grants AT&T's request, must simultaneously allow all contributors with declining assessable revenues to elect to contribute on the basis of prospective revenues.

Although WorldCom would elect to contribute to the fund on the basis of projected revenues if AT&T were so permitted, we would do so with great reluctance in light of the above-described administrative burden associated with having to adopt new processes to contribute to universal service on the basis of projected revenues and to perform the necessary true-ups once actual revenue amounts become available. Moreover, WorldCom is extremely concerned that the administrative resources that would be required to administer a combination forecast/historical system – and the enforcement of that new system with true ups and other activities – is far better spent attacking the underlying problem – replacing the revenue-based assessment method with a connections-based approach.

IV. Conclusion

For the reasons explained above, the Commission should deny AT&T's request to contribute to universal service on the basis of projected revenues and instead should implement meaningful reform by adopting a per-connection contribution methodology, as proposed in the Further Notice. In the event that the Commission grants AT&T's request, however, it must simultaneously grant similarly-situated contributors the same relief.

Sincerely,

Lori Wright //s//

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